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December 6, 2017

VIA ECF

The Honorable Leo I. Brisbois
United States District Court
515 West 1st Street, Room 412
Duluth, MN 55802-1397

Re: *Minnesota Center for Environmental Advocacy, et al. v. Tooke, et al.*,
Case No. 0:17-cv-00905-JNE-LIB (D. Minn.)

Your Honor:

A Pretrial Conference Notice and Order was lodged in *Minn. Ctr. For Entl. Advocacy, et al. v. Tooke*,¹ *et al.*, on November 27, 2017, scheduling a Pretrial Conference for January 3, 2018, and directing the parties to prepare a report under Rule 26(f). Similar orders have been entered in two related cases, and letters materially similar to this letter are being filed in those cases. *See Sierra Club et al. v. United States Forest Service, et al.*, Civ No. 0:17-cv-00905-JNE-LIB; *Ctr. for Biological Diversity, et al. v. Zinke*, Civ. No. 0:17-cv-00914-JNE-LIB. No such order has been entered in a third related case, *WaterLegacy v. U.S. Forest Service, et al.*, Civ. No. 0:17-cv-00276-JNE-LIB.

The parties in the three cases in which orders have been lodged have conferred and respectfully request that the Pretrial Conference in this case and the other two cases be continued. This letter is being submitted on behalf of all counsel, who have reviewed it and concur in its contents.

The parties believe that good cause exists for a continuance. There are outstanding motions to dismiss for lack of subject matter jurisdiction in all four cases. If the motions are granted, there will be no need for pretrial conferences. If the motions are not granted, there will be no resulting delay or prejudice to any party because these actions are “action[s] for review on an administrative record” under Rule 26(a)(1)(B). As a result, they would ordinarily be exempt from the requirements of Rule 26(f). *See Fed. R. Civ. P.*

¹ Tony Tooke replaced Thomas Tidwell as Chief of the United States Forest Service and “is automatically substituted as a party” pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

December 6, 2017
Page 2

26(f)(1). Instead, these types of actions typically involve no discovery or disputed facts, and are resolved through cross motions for summary judgment based on an administrative record. *See, e.g., Voyageurs Nat'l Park Ass'n v. Norton*, 381 F.3d 759, 766 (8th Cir. 2004) (“It is well-established that judicial review under the [Administrative Procedure Act] is limited to the administrative record that was before the agency when it made its decision.”).

As a result, the parties anticipate proposing a schedule for lodging the administrative record, providing a period of time for resolving any disputes regarding the content of the administrative record, and setting forth a briefing schedule for cross motions for summary judgment in any of the cases in which the motions to dismiss are not granted. The parties believe that establishing such a schedule would be most practical and efficient after rulings on those motions. But if the Court prefers to proceed with pretrial conferences before such rulings, the parties in the three cases in which conferences have been scheduled respectfully suggest that it might be most efficient to hold them, along with a conference in the fourth case, on the same date.

Thank you for your consideration of this request.

Sincerely,

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Acting United States Attorney

s/ David W. Fuller

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